

February 10, 1953

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ARIZONA ATTORNEY GENERAL**

Mr. M. L. Brooks
Superintendent
Department of Public Instruction
Capitol Building
Phoenix, Arizona

Dear Mr. Brooks:

As per your request of January 7, 1953, we researched the first problem presented and the attached opinion is the fruits of our labor.

The remaining question raised in your letter is presently undergoing research and an opinion will be rendered shortly.

Yours very truly,

TGB:GC
Encl

THADDEUS G. RAUER
Assistant to the
Attorney General

TO: Mr. M. L. Brooks
Superintendent
Dept. of Public Instruction

RE: School District Consolidation

QUESTION: "In Section 54-406 dealing with consolidation, what is the meaning of the sentence 'on the fifth day after the election the superintendent and the chairman of the board of supervisors shall canvass the vote, and if a majority of the votes cast favor consolidation the districts voting become one district...?'"

For clarification the pertinent section of Section 54-406 of the Code is set out:

"54-406. Consolidation of districts--Petition--Election--Trustees-Organization.-- Two (2) or more school districts may be consolidated into one (1) district. When fifteen (15) per cent of the school electors of two (2) or more school districts petition the county superintendent for a consolidation of such school districts, he shall within ten (10) days call an election to determine such question. Public notices of such election, shall be posted in not less than three (3) public places in each of such districts at least ten (10) days before said election. Said election shall be held in the same manner and the electors shall possess the qualifications prescribed for the election of trustees. The ballots shall be prepared by the county school superintendent and delivered to the clerk of the board of trustees of each district at least two (2) days before the election. The ballots shall contain the words: 'Consolidation, Yes; Consolidation, No.'

The officers of such election shall be appointed by the board of trustees of the districts; and shall report the results to the superintendent. On the fifth day after the election the superintendent and the chairman of the board of supervisors shall canvass the vote, and if a majority of the votes cast favor consolidation the districts voting become one district and the superintendent shall call a special election within ten (10) days to elect a board of trustees for such consolidated district. * * *

A very similar issue to the one at hand was raised in the Supreme Court of Arizona by the case of SHARP v. GEORGE (1896) 5 Ariz. 65, 46 P. 212. The facts in that case were as follows: two adjoining school districts had been formed into a union high school district by vote of a majority of the proposed district, but not a majority of each district concerned. Through error one district did not vote, however, the total possible vote in the district not voting could not have affected the outcome of the vote. The specific law in question was Section No. 32, Laws of the 18th Legislative Assembly. Section 3 of that act reads as follows:

"Sec. 3. If a majority of such votes be cast in favor of a High School, it shall be the duty of the County Superintendent to call a mass meeting of the qualified in such single district or of the school districts uniting, within fifteen days, for the purpose of locating the said High School. * * *

The court concluded the issue in the following terms:

" * * * In order that a union high school district may be formed of two or more adjoining school districts, it is necessary that a majority of the trustees of each of the school districts shall petition for that purpose, and when that is done an election must be ordered therein. It is evident that in such cases each of said school districts is a part of the proposed union high school district, made such by the said petition; that collectively said school districts form, as it were, a union high school district in embryo. People v. Union High School Dist. of Solano Co. (Cal.) 36 Pac. 119. If at the election therein a majority of the votes, in the district as a whole, are for the union high school district, it is then a district; otherwise, it is not.
* * *

Thus, under our present Section 54-406, for purposes of consolidation the districts voting would be considered as a voting unit and the majority vote of all the votes cast in that embryo district would determine a consolidation.

It might be wise, at this time, to distinguish the case of SOUTHERN PACIFIC CO. v. MARICOPA COUNTY (1940), 56 Ariz. 247, 107 P. 2d 212, which has been cited previously by this office to effect a contrary holding. The issue at bar in that case was whether a common school district which had become a part of a union high school district could annex territory from an adjacent common school district. No vote had been taken in the annexed territory prior to annexation. The issue then was basically one of annexation and not of consolidation and the court concluded that the specific statutory procedure set out in Section 1003 of

the revised Code of 1928 must be followed. The above code section provided for vote both in the high school district and the territory to be annexed. The above case would, therefore, have little bearing on the interpretation of Section 54-406.

The issue of a majority vote on consolidation has been before the courts in other states:

WEAR v. FAULKNER, et al (Fla. 1946) 80. 2d 745;
MC GEE v. BONDEKER (Tex. 1947) 200 SW 2d 697;
ALLEN v. HARMONY GROVE CONSOL. SCHOOL DISTRICT
No. 19 (Ark. 1927) 293 SW 997;
FOWLER v. MC KNOWN (Mo. 1926) 290 SW 123;
KENEPPI v. SCOTT (Mo. 1924) 264 SW 369;
MULTNOMAH CO. v. SCHOOL DISTRICT No. 945 (Ore.
1934) 27 P. 2d 873.

Each of the above cases dealt with the peculiar wording of the state statute involved, none of which are similar to our own. It is only in the case of PEOPLE EX REL BROWN v. UNION HIGH SCHOOL DISTRICT OF SOLANO COUNTY (Cal. 1894) 36 P. 119, that the language of the statute is similar to that contained in Section 54-406 of the Arizona Code. It is to be noted that the foregoing case was cited with approval and holding was followed in SHARP v. GEORGE, supra.

It is our conclusion, therefore, that the majority of the votes cast in a proposed district will effect a consolidation within the meaning of Section 54-406, A.C.A. 1939.

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